



When recorded return to:
City Clerk
City of Cottonwood
827 North Main Street
Cottonwood, AZ 86326

FOLDER

CONSENT OF CITY OF COTTONWOOD TO
ASSIGNMENT OF TENANT RIGHTS IN
LOT #110 REPLAT OF COTTONWOOD AIRPARK TRACT ONE
PARTS A&B

Once fully executed, this Consent is legally binding as of August 27, 2008 (the "Effective Date").

BACKGROUND

The Ground Lease

- A. The City of Cottonwood, formerly known as the Town of Cottonwood, an Arizona municipality, is the "Landlord" under a Ground Lease Agreement dated May 5, 1983 to encourage economic development of the Cottonwood Airport industrial property and to encourage economic development within the City of Cottonwood.
- B. Cottonwood Airpark L.C. ("CALC") is the successor in interest to Cottonwood Airpark I, L.C. as successor in interest to Cottonwood Airpark, Inc., which was originally named as "Tenant" under the Ground Lease Agreement.
- C. The Ground Lease Agreement was amended by the First Amendment dated November 30, 1983; the Second Amendment dated March 12, 1985; the Third Amendment dated August 21, 1985; the Fourth Amendment dated February 7, 1989; and the Fifth Amendment dated January 1, 1993; the Sixth Amendment dated July 5, 1994; the Seventh Amendment dated September 16, 1997; the Eighth Amendment recorded December 22, 1998, in Book 3626, Page 140; the Ninth Amendment recorded October 1, 2001, in Book 3867, Page 214; the Tenth Amendment recorded March 17, 2003, in Book 4011, Page 367; the Eleventh Amendment recorded July 20, 2005, in Book 4288, Page 640; the Twelfth Amendment recorded July 20, 2005, in Book 4288, Page 644; the Thirteenth Amendment recorded July 20, 2005, in Book 4288, Page 649; the Fourteenth Amendment recorded January 20, 2006, in Book 4356, Page 475; the Fifteenth Amendment recorded August 21, 2006, in Book 4427, Page 538; and the Sixteenth Amendment which was recorded September 3, 2008, in Book 4619, Page 633. The Ground Lease Agreement and all Amendments are collectively referred to as the "Ground Lease".
- D. A memorandum of the Ground Lease dated May 23, 1983 was recorded January 4, 1984 in Book 1597, Pages 576-581 and thereafter corrected by an instrument recorded July 1, 1985 in Book 1734, Pages 11-15 of the records of the Yavapai County Recorder (the "Memorandum of Ground Lease").



- E. On March 17, 2003 CALC made an assignment to Backus Family Investments, L.L.C., an Arizona limited liability company the rights possessed by CALC under its Ground Lease with the City of Cottonwood, i.e., to the South ½ of Lot 108 and Lots 109 through 118 (collectively, the "Lots"), recorded March 17, 2003 in Book 4011 of Official Records, page 368.
- F. On October 27, 2003 the City of Cottonwood recorded the Replat of Cottonwood Airpark Tract One – Parts A&B in Book 48 Page 90 of the Official Records of Yavapai County.
- G. On March 23, 2004, Backus Family Investments L.L.C. ("BFI") (ASSIGNEE) made an assignment to Alan J. Rackov and Wendy L. Rackov/Jackson the rights possessed by BFI under its Ground Lease with the City of Cottonwood i.e., Lot #110 REPLAT OF COTTONWOOD AIRPARK TRACT ONE – PARTS A&B (the "Lot").
- H. On May 10, 2007, Alan J. Rackov and Wendy L. Rackov/Jackson (Lessee) made an assignment to Gary M. Mannix and Catherine M. Mannix (ASSIGNEE) as Lessee possessed under its Ground Lease with the City of Cottonwood, i.e., Lot #110 of the REPLAT OF COTTONWOOD AIRPARK TRACT ONE – PARTS A&B (the "Lot").
- I. Gary M. Mannix and Catherine M. Mannix (Lessee) now wish to make an assignment back to Alan J. Rackov and Wendy L. Rackov/Jackson (ASSIGNEE) the rights possessed by lessee under their ground lease with the City of Cottonwood, i.e., Lot #110 REPLAT OF COTTONWOOD AIRPARK TRACT ONE – PARTS A&B (the "Lot").
- J. The Ground Lease requires the written consent of the City of Cottonwood to the assignment by Gary M. Mannix and Catherine M. Mannix ("Mannix") of their rights as Tenant under the Ground Lease to ASSIGNEE. It appears that the best interests of the City will be served by permitting ASSIGNEE to construct new improvements on the Lot, thus increasing the development and tax base for the City of Cottonwood. Thus, the City of Cottonwood has indicated that it will grant its consent to this transaction by execution and delivery of this Consent, in consideration for and subject to the covenants and conditions recited below.

AGREEMENT

Now, therefore, for valuable consideration received, the City of Cottonwood agrees that:

1. Consent. The City of Cottonwood hereby consents to the Assignment by Gary M. Mannix and Catherine M. Mannix to ASSIGNEE of their rights to the Lot under the Ground Lease. Such consent to be effective upon execution of this instrument by ASSIGNEE.
2. Acceptance of Assignment and Promise to Perform. By his signature below, ASSIGNEE hereby accepts, reaffirms and agrees to faithfully perform all of Mannix's duties, obligations and undertakings with respect to the Lot.
3. Release. In exchange for ASSIGNEE's faithful performance hereunder, and as of Effective Date of this Agreement, the City as Landlord under the Ground Lease, hereby:



- 3.1 Certifies that formal approval of the Assignment to ASSIGNEE is hereby granted by the city.
- 3.2 Acknowledges and agrees that Mannix has assigned its rights, duties and obligations to the Lot to ASSIGNEE, all as set forth in the "Assignment". Landlord agrees to look solely to ASSIGNEE for collection of all rents and other amounts arising from the Ground Lease for the Lot after the Effective Date of this Consent and releases Mannix (and its predecessors) as Tenant from all obligations or duties arising under the Ground Lease relative to the Lot.
- 3.3 Acknowledges receipt of all rent and other amounts owned by Tenant to Landlord under the Ground Lease with respect to the Lot as of the Effective Date;
- 3.4 Ratifies, affirms and confirms the validity of all other terms and conditions of the Ground Lease;
- 3.5 Confirms that, to Landlord's knowledge, there are no uncured defaults or breaches by Tenant under the Ground Lease;
- 3.6 Agrees that the "Rent" for the Lot is \$254.35 per year, as set forth in Sections 4B.2 & 3 of the Ground Lease Agreement dated May 5, 1983 with the next payment due on January 1, 2008.
- 3.7 Agrees that the property taxes for the Lots shall be separately assessed and paid by ASSIGNEE;
- 3.8 Agrees that the failure of ASSIGNEE to pay rent, to pay property taxes, or to otherwise fully comply with the terms of the Ground Lease shall be considered a default by ASSIGNEE only as to the Lot and shall not be considered a default by Tenant under the Ground Lease affecting any of the other rights of Mannix or affecting any other right of Mannix or affecting any other property leased by Mannix;
- 3.9 Agrees that in the event of a default by Mannix under the Ground Lease, Landlord will exercise its rights solely against Mannix and will not construe a default by Mannix as a default by ASSIGNEE so long as ASSIGNEE pays its rent and timely performs all other obligations as required under the Ground Lease, with respect to the Lot, any default by Mannix regarding its other obligations under the Ground Lease shall not be construed as a default by ASSIGNEE;
- 3.10 Acknowledges that ASSIGNEE intends to encumber its leasehold interest in the Lot to construct certain improvements which may be subject to an encumbrance in favor of a Lender. Landlord agrees to provide notice to the Lender and to Mannix in the event of a default by ASSIGNEE under the Ground Lease pertaining to the Lot if requested by such Lender, and will execute a separate



instrument to that effect if asked to do so.

- 3.11 Acknowledges that it shall look solely to ASSIGNEE for compliance with the insurance requirements of the Landlord under the Ground Lease with respect to the Lot;
 - 3.12 Acknowledges that pursuant to Section 20 of the Ground Lease the address for the tenant under the lot is: **P.O. Box 466, Cayvcos, CA 93430.**
 - 3.13 Affirms that the Term of the Lease to the Lot runs until December 31, 2033.
4. Ratification of Ground Lease with Respect to the Lot. The terms and conditions contained in the Ground Lease with respect to the Lot are hereby ratified, confirmed and continue in full force and effect. The Term Commencement date of December 1983 began a 25-year term as to certain portions of the Lease and a 50-year Term as to certain other portions. The Lease also granted options for renewal. The parties intend to ratify and affirm the length of the term and of all other rights and obligations under the Ground Lease with respect to the Lot. The parties represent that to the best of their knowledge and belief, there are no other amendments, modifications, supplements or other agreements or understandings with respect to the subject matter of this Consent (i.e., the Lot) except for those identified herein. The City as Landlord further acknowledges (i) that Mannix as Tenant has paid all rent due with respect to the Lot, and (ii) that, to the City's knowledge, Mannix has fully performed all of its obligations and is in good standing under the Ground Lease with respect to the Lot.
 5. Further Documentation. The City agrees in good faith to execute such further or additional documents as become necessary or appropriate to carry out the intent and purpose of this Consent.
 6. Counterparts and Facsimiles. This Consent may be executed by facsimile or in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

This Consent is legally binding as of the Effective Date regardless of the actual date of signing, provided that it shall not take effect until it is fully executed by both the City and ASSIGNEE.

The undersigned Representative of the City of Cottonwood hereby personally affirm and certify that there has been full compliance with all requirements for approval of the Assignment by the City and do further affirm and certify that this Consent is hereby approved, ratified and accepted by the City of Cottonwood.

Approved as to Form Only:

Steven B. Horton
Magnum, Wall, Stoops & Warden, PLLC
City Attorneys

Date: 9/9/08



CITY OF COTTONWOOD

Attest:

By: *Diane Joens*
Diane Joens, Mayor

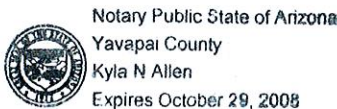
Marianne Jiménez
Marianne Jiménez, City Clerk

Date: 9-11-08

Date: 9-11-08

State of Arizona }
 } ss.
County of Yavapai }

On this the 11th day of September, 2008, before me, the undersigned Notary Public, personally appeared Diane Joens, the Mayor of the City of Cottonwood, who is personally known to me or satisfactorily proved himself/herself to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.



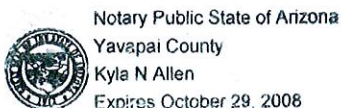
SEAL

Kyla N Allen
Notary Public

My Commission Expires: 10-29-08

State of Arizona }
 } ss.
County of Yavapai }

On this the 11th day of September, 2008, before me, the undersigned Notary Public, personally appeared Marianne Jiménez, the City Clerk of the City of Cottonwood, who is personally known to me or satisfactorily proved himself/herself to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.



SEAL

Kyla N Allen
Notary Public

My Commission Expires: 10-29-08



The undersigned ASSIGNEE hereby personally affirms and accepts the duties of ASSIGNEE as outlined above.

Alan Rackov and Wendy L. Rackov/Jackson

By: Wendy L. Rackov

By: Alan Rackov

Date: 9-18-08

State of Arizona }
 } ss.
County of Yavapai }

On this the ____ day of _____, 2008, before me, the undersigned Notary Public, personally appeared Alan Rackov and Wendy L. Rackov/Jackson, who is personally known to me or satisfactorily proved himself/herself to be the person who executed the foregoing Consent, acknowledging that he/she executed the same for the purposes therein contained, being authorized so to do.

Notary Public

My Commission Expires:

*SEE ATTACHMENT
#*



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

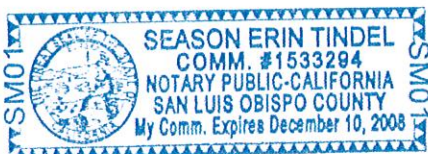
State of California

County of San Luis Obispo

} ss.

On 09-18-08 before me, Season Erin Tindel, Notary Public, personally appeared Wendy L Rackov, who

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SEAL

(Seal)

Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ Individual
☐ Corporate Officer

Title

- ☐ Partner(s) ☐ Limited
☐ General
☐ Attorney-in-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

DESCRIPTION OF ATTACHED DOCUMENT

Assignment of Tenant Rights

Title or Type of Document

Number of Pages

Date of Document

Absent Signer (Principal) is Representing:

Signer(s) Other Than Name(s) Above



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

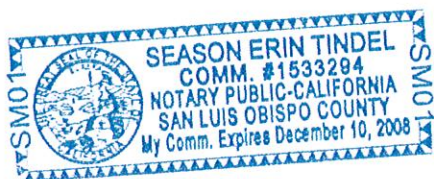
State of California

County of San Luis Obispo

} ss.

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Signature of Notary Public

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Signer(s) Other Than Name(s) Above